

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
State/Territory: Maine

LIENS AND ADJUSTMENTS OR RECOVERIES

1. The State uses the following process for determining that an institutionalized individual cannot reasonably be expected to be discharged from the medical institution and return home:

Not applicable. Maine does not impose liens. See 42 CFR § 433.36(c).

2. The following criteria are used for establishing that a permanently institutionalized individual's son or daughter provided care as specified under regulations at 42 CFR § 433.36(f):

Not applicable. Maine does not impose liens. See 42 CFR § 433.36(c).

3. The State defines the terms below as follows:

○ estate

All real and personal property and other assets included in the recipients estate; and any other real and personal property and other assets in which the recipient has any legal interest at the time of death, to the extent of that interest, including assets conveyed to a survivor, heir or assign of the deceased through tenancy in common, survivorship, life estate, living trust, joint tenancy in personal property or other arrangement. This provision shall be interpreted in a manner consistent with the Medicaid eligibility rules.

An estate does not include joint tenancies in real property.

○ individual's home

Not applicable. Maine does not impose liens. See 42 CFR § 433.36(c).

○ equity interest in the home

Not applicable. Maine does not impose liens. See 42 CFR § 433.36(c).

○ residing in the home for at least one or two years on a continuous basis, and

Not applicable. Maine does not impose liens. See 42 CFR § 433.36(c).

○ lawfully residing.

Not applicable. Maine does not impose liens. See 42 CFR § 433.36(c).

TN No. 95-014
Supersedes _____ Approval Date 12/1/95 Effective Date 7/1/95 or as
TN No. _____
effective by law

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4. The State defines undue hardship as follows:

Undue hardship exists when at least one of the following conditions/standards exist.

1. the asset had been the primary residence of the person claiming hardship;
2. that person used their personal resources to maintain the property, pay the taxes, etc;
3. that person lived in the property and provided significant care for the deceased recipient so that the recipient could remain at home for a longer period of time;
4. that person had a contractual relationship with the deceased recipient in which the residence was held as security or in which the residence was required to be transferred for value previously received;
5. that person relied to their detriment upon a promise by the deceased recipient that the residence would become theirs at the recipient's death;
6. that person is a resident and co-owner of the property; or
7. the property is income producing and provides funds for that person's necessary support and maintenance.

The hardship waiver is not available in the case of a recipient who had assets disregarded because he or she received long-term-care insurance benefits.

5. The following standards and procedures are used by the State for waiving estate recoveries when recovery would cause an undue hardship, and when recovery is not cost-effective:

Undue Hardship

The third Party Liability Unit and the Attorney General's office review the application for hardship waiver and the decision is made based on the standards previously listed in section 4.

Not Cost-Effective

The Attorney General and the Third Party Liability Program must jointly agree based on the cost-effective definition in #6 below. When the decision is to waive, the case is documented and notification is forwarded to the estate representative.

6. The State defines cost-effective as follows (include methodology/thresholds used to determine cost-effectiveness):

The paid claims history is reviewed for a total amount of related claims. If that amount exceeds \$200.00 the claim is considered cost-effective unless the claim is initially disallowed by the estate administrator.

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Further pursuit of the estate recovery is determined by:

- ☐ The value of the estate.
- ☐ The estimated cost to pursue (decision is made in concert with the Attorney General's Office).

7. The State uses the following collection procedures (include specific elements contained in the advance notice requirement, the method for applying for a waiver, hearing and appeals procedures, and time frames involved):

Collection Procedures

When it is determined that a Medicaid recipient's estate is subject to recovery the Department may file:

1. a claim in Probate Court against all assets included in the deceased recipient's probated estate. The process for filing such a claim is governed by existing provisions of the State of Maine, Probate Code, which governs the recovery of claims against creditors' claims.
2. a claim in any court of competent jurisdiction against real and personal property and other assets in which the recipient had any legal interest at death to the extent of that interest.
3. a claim in any court of competent jurisdiction or any other legal means to recover the cost of medical services provided during a period of inaccurate eligibility.

Advance Notice Requirement

Reasonable efforts to give notice of the Estate Recovery Program will be provided to recipients at the time of application for Medicaid.

Reasonable efforts to give notice will be provided pursuant to the relevant provisions of the Probate Code or to the legally authorized representative of the recipient's estate when recovery is being sought. If there is no legally authorized representative the State shall make reasonable efforts to notify known family members or heirs. If no one comes forward on the recipients' behalf to settle the estate the State may seek appointment as personal representative as a creditor pursuant to the Probate Code.

Notice shall include the action the State intends to take, the basis for the action, the amount sought to be recovered and a copy of these rules.

Lack of notice pursuant to this section does not bar application of the Estate Recovery Program.

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Method for Applying for a Waiver

All reasonable requests for a hardship waiver will be considered on an individual basis. The procedure for making a request is as follows.

1. A request for hardship waiver must be made within six months from the recipient's death or within thirty (30) days from the notice of the Department's claim, whichever is later.
2. The request shall contain a written statement of the circumstances constituting the hardship and any supporting documentation.

The Department may request additional information. The Department shall determine whether undue hardship exists within ninety (90) days from the date of the receipt of all information requested. Appropriate notice of the decision will be sent to the person making the request.

Hearing and Appeals Procedures and Time Frames

A decision pursuant to the section is final unless within thirty (30) days of the date of the decision, the person making the hardship request sends a written request for agency review.

The agency review shall be conducted through the Department's Administrative Hearings Unit.

If the person making the hardship request is dissatisfied with the final decisions of the Administrative Hearings Unit, he/she may appeal this final agency decision to the Superior Court.

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